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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,455	12/13/2001	Michelle R. Eaves	E059 1010	4578

7590

01/29/2004

WOMBLE CARLYLE SANDRIDGE & RICE

P.O. Box 7037

Atlanta, GA 30357-0037

EXAMINER

DEMILLE, DANTON D

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/015,455

Applicant(s)

EAVES, MICHELLE R.

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-12 and 14-18 is/are rejected.
- 7) ☒ Claim(s) 5 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. **Claims 1 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kazik in view of Dias.** Broadly, Kazik teaches a carriage with an adjustable torso support 38 for providing lateral support and an adjustable headrest support 40 for providing head and neck support. The only difference between the claims and Kazik is the claims call the device “an amusement-type carriage device”. Clearly wheelchairs have been used to amuse children by racing down the corridor. The only difference is the functional intended use of the device. It would have been obvious to amuse children, especially handicapped children who spend a lot of time in wheelchairs, by racing down the corridor or spinning them about multiple axes. Dias further substantiates the intended use of amusing children by improving the appearance of a wheelchair by applying a decorative body shell that looks like a fire engine for example. If not inherent in the Kazik device, it would have been obvious to one of ordinary skill in the art to modify Kazik to use it as an amusement device by dressing up the wheelchair as taught by Dias and racing or spinning the child within the wheelchair to amuse and give the child the feeling of motion.

2. Regarding claim 17, a wheelchair is capable of providing yaw by rotating about a vertical axis or weave. Part of the fun of being pushed rapidly within a wheelchair is to be spun around or weave in an unsteady manner. This would comprehend a yaw motion and thereby comprehend the claim.

3. **Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickman in view of Dias.** The device of Hickman teaches a device having a torso support 28,

29 for providing lateral support and an adjustable headrest support 50, 51 and a lap belt 38, 39.

As noted above, it would have been obvious to one of ordinary skill in the art to modify the device of Hickman to use it as an amusement device by dressing up the wheelchair as taught by Dias and racing or spinning the child within the wheelchair to amuse and give the child the feeling of motion.

4. **Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suhre in view of Keropian and Dias.** Suhre teaches an adjustable torso support at 22 providing lateral support and an adjustable headrest and neck support 32. The torso supports 22 only provide a very limited degree of lateral support for the torso. It would only prevent specific lateral movement. The torso support of Keropian would provide much more restraining support for the torso. It would provide anterior and posterior movement restraint. It includes rotatable support arms 64, a plurality of vertically supported rods 20 with a plurality of locking screws in clamp 24, a pair of adjustable hand brackets 84 and a pair of hand pads 72. It would have been obvious to one of ordinary skill in the art to modify Suhre to use the torso support as taught by Keropian as an obvious equivalent alternative means for restraining the torso of the person with much more support and restraint.

5. As noted above, the wheelchair of Suhre is capable of being used to amuse children by racing and spinning the child within the wheelchair. It would have been obvious to one of ordinary skill in the art to further modify the device of Suhre to use it as an amusement device by dressing up the wheelchair as taught by Dias and racing or spinning the child within the wheelchair to amuse and give the child the feeling of motion.

6. **Claims 1 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomita et al.** Broadly, Tomita teaches an apparatus having an adjustable torso support 1260 mounted on the carriage and a headrest support 1280. As viewed in figure 4, each torso support 1260 is designed for each person. The torso support would press the user into the seat and the lateral arms of the U-shaped torso support 1260 would provide lateral support. It would prevent the user from sliding from one side of the chair to the other. The torso support 1260 would be adjustable to accommodate different sized people by locking in different positions. While Tomita appears silent with regard to the adjustability of the headrest, providing an adjustable headrest to accommodate different sized users would have been an obvious provision to one of ordinary skill in the art. Regarding claims 6 and 7, details of the operation of the simulation device is well within the realm of the artisan of ordinary skill. Regarding claim 8, Tomita teaches that the appearance of the device can take any desired appearance. Simulating animals or cartoon characters is one of the conventional appearances used for these devices.

7. **Claims 9, 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman in view of Dias.** Broadly, Coleman teaches a wheelchair that has an adjustable seat attached to a base by spring mechanism 24. There is safety belt S for adjustably supporting the torso and hip providing lateral support. The headrest 7c also is adjustable. As noted above, the wheelchair of Coleman is capable of being used to amuse children by racing and spinning the child within the wheelchair. It would have been obvious to one of ordinary skill in the art to further modify the device of Coleman to use it as an amusement device by dressing up the wheelchair as taught by Dias and racing or spinning the child within the wheelchair to amuse and give the child the feeling of motion. Regarding claims 14-16, Coleman teaches many different

control panels for controlling the operation of the device. Any such details of operation if not inherent in Coleman would have been an obvious provision.

8. Regarding claim 18, a wheelchair is capable of providing yaw by rotating about a vertical axis or weave. Part of the fun of being pushed rapidly within a wheelchair is to be spun around or weave in an unsteady manner. This would comprehend a yaw motion and thereby comprehend the claim.

9. **Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 9 above, and further in view of Sigafoo.** Coleman teaches column 8 lines 57-60 that additional belts may be needed to help secure the person when moving from a sitting position to a standing position. Sigafoo teaches the convention of providing shoulder straps in addition to the hip support for helping secure the person in the wheelchair. It would have been obvious to one of ordinary skill in the art to further modify Coleman to include additional straps such as shoulder straps as taught by Sigafoo to better secure the person within the wheelchair.

10. **Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 9 above, and further in view of Keropian.** Coleman teaches column 8 lines 57-60 that additional belts may be needed to help secure the person when moving from a sitting position to a standing position. Keropian teaches additional straps including a pair of support arms as noted above for adding support for the person within the wheelchair. It would have been obvious to one of ordinary skill in the art to further modify Coleman to include additional straps such as the rotatable support arms and pair of pads as taught by Keropian to

provide additional support for the person during transport and movement from a sitting position to a standing position.

11. **Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 9 above, and further in view of Kornberg.** Coleman already teaches that the headrest 7c is adjustable to accommodate a specific neck condition. The headrest appears to be merely height adjustable. The headrest of Kornberg is also adjustable in the depth direction. It would have been obvious to one of ordinary skill in the art to further modify Coleman to include a headrest adjustment means as taught by Kornberg to provide additional degrees of adjustability to the headrest to accommodate different neck conditions.

Allowable Subject Matter

12. Claims 5 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

13. Applicant's arguments with respect to claims 1-16 are have been considered but are moot in view of the new ground(s) of rejection.

14. Regarding the arguments to Kazik, applicant argues that Kazik is not an amusement-type carriage device, however the examiner respectfully disagrees. Applicant's arguments are directed to what one calls the device or the intended use of the device. The wheelchair has often been used to amuse the occupant by racing or spinning the occupant. Dias also suggests amusing the occupant by dressing the wheelchair up into a fun character. It is well known to cheer up an occupant and particularly children by racing and spinning the occupant in the wheelchair.

Without any clear structural limitations that would define over the wheelchairs of the prior art the only difference appears to be intended use.

15. Applicant also argues that the supports of Kazik are not lateral support. As noted by applicant the pad of Kazik apply pressure to the sides of the person and thereby provide support to the sides of the patient. As broadly recited the pads of Kazik would support the sides of the occupant. It is not clear how the pads would not provide support. They may also function to apply pressure to help treat curvature of the spine but this is an additional feature of the pads.

16. The same would apply to Hickman, Coleman, Suhre. There appears to be no structural limitation to define over Hickman other than the intended use. As is well known and further suggested by Dias, wheelchairs can also function to amuse the occupant.


17. Regarding Tomita, figure 4 clearly shows that there are two torso supports 1260 for each occupant. Each support would provide lateral support preventing the occupant from sliding around in the chair. It is not clear how applicant can disregard the U-shaped support that presses the user into the seat. Tomita also teaches a control device 1800 comprising a CPU and memory for controlling the operation of the device. It is well within the realm of the artisan of ordinary skill that the device includes a control panel. Without a control panel one would not be able to access the CPU and memory of the controller.


Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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19. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

ddd
23 January, 2004
 (703) 308-3713
Fax: (703) 872-9306
danton.demille@uspto.gov


Danton DeMille
Primary Examiner
Art Unit 3764